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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

THRIVE HOOD RIVER, OREGON WILD,
SIERRA CLUB, OREGON NORDIC CLUB,
FRIENDS OF MOUNT HOOD, OREGON
KAYAK AND CANOE CLUB, and MIKE
McCARTHY,

Plaintiffs,

v.

META LOFTSGAARDEN, Forest Supervisor
for the Mt. Hood National Forest, and the
UNITED STATES FOREST SERVICE,

Defendants.

Case No. 3:22-cv-01981

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF, VACATUR
OF ILLEGAL AGENCY DECISION**

(Pursuant to the Administrative Procedure Act,
the National Environmental Policy Act, and the
Omnibus Public Land Management Act of
2009, as amended by the Mt. Hood Cooper
Spur Land Exchange Clarification Act of 2018)

INTRODUCTION

1
2 1. Thirteen years ago, in 2009, Congress passed legislation directing the Forest
3 Service to complete the Government Camp/Cooper Spur Land Exchange on Mt. Hood. The
4 legislation, and the land exchange it described, were intended to resolve a decades-long dispute
5 over the future of the north side of Mt. Hood, namely: whether the relatively undeveloped north
6 side should be conserved to protect wildlife habitat and water quality, or instead developed in a
7 way that includes a destination ski resort (along with all the foreseeable ancillary development it
8 would bring to the area). The legislation resolved that dispute in favor of conservation: the north
9 side would be protected from development via a public-private land exchange. Because it would
10 so fully protect the north side of Mt. Hood from undesirable development, the land exchange
11 mandated by Congress became known as the “Clean Sweep.”

12 2. The Clean Sweep has never been implemented, and without action from this
13 Court it never will. This year the Forest Service decided to move forward with a land trade with
14 its private partner, Mt. Hood Meadows (“Meadows”). Unfortunately, the land trade that the
15 Forest Service approved does not implement the Clean Sweep. Going against Congress’s
16 instructions, the proposed trade will not protect the north side of Mt. Hood from commercial
17 development. Plaintiffs, several of whom helped draft and negotiate the settlement that led to the
18 legislation and the Clean Sweep, now bring suit to enforce the legislation and the Congressional
19 intent behind it. As explained below, the Forest Service’s land exchange is unlawful as proposed,
20 and must be enjoined. On remand, the Forest Service should adopt a revised land exchange plan
21 that complies with the law and protects the north side of Mt. Hood.

22 3. This action is brought by Thrive Hood River, Oregon Wild, the Sierra Club, the
23 Oregon Nordic Club, Friends of Mount Hood, Oregon Kayak and Canoe Club, and Mike

McCarthy (collectively “the Conservation Plaintiffs”). The suit is against Meta Loftsgaarden, Forest Supervisor for the Mt. Hood National Forest, and the United States Forest Service (collectively “Defendants” or “the Forest Service”). The Conservation Plaintiffs seek vacatur of an illegal agency decision, as well as declaratory and injunctive relief under the Administrative Procedure Act (APA) (5 U.S.C. §§ 551 *et seq.*). Specifically, the Conservation Plaintiffs challenge the Forest Service’s May 3, 2022, final Record of Decision (ROD) approving a Government Camp/Cooper Spur Land Exchange (“the Proposed Exchange”), as well as the underlying Environmental Impact Statement (EIS). The ROD and the EIS violate the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370(h)) and the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11, 123 Stat. 1018), as amended by the Mt. Hood Cooper Spur Land Exchange Clarification Act of 2018 (Pub. L. 115-110, 131 Stat. 2270).

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706 (APA) and 28 U.S.C. §§ 1331 (federal question). The Conservation Plaintiffs have challenged a final agency action as defined by § 704 of the APA, and have exhausted all required administrative remedies provided by the Forest Service.

5. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Defendant Mt. Hood National Forest Supervisor Meta Loftsgaarden resides in this district, and because the events or omissions giving rise to the claims occurred in Oregon.

6. This case is properly filed in the Portland Division of this District pursuant to Local Rules 3-2 and 3-3 because the Mt. Hood National Forest Supervisor who signed the challenged ROD is headquartered in Sandy, Clackamas County, Oregon.

1 **PARTIES**

2 7. Plaintiff THRIVE HOOD RIVER, also known as the Hood River Valley
3 Residents' Committee, Inc., is a non-profit corporation organized under the laws of the State of
4 Oregon. THRIVE HOOD RIVER's mission is to protect Hood River's farms, forests, special
5 wild places, and the livability of its cities and rural communities. THRIVE HOOD RIVER is
6 headquartered in Hood River, Oregon.

7 8. Plaintiff OREGON WILD, also known as the Oregon Natural Resources Council
8 Fund, is a non-profit corporation organized under the laws of the State of Oregon. OREGON
9 WILD's mission is to protect and restore Oregon's wildlands, wildlife, and waters as an enduring
10 legacy for future generations. OREGON WILD is headquartered in Portland, Oregon and
11 maintains field offices in Bend, Eugene, and Enterprise, Oregon.

12 9. Plaintiff SIERRA CLUB is a non-profit corporation organized under the laws of
13 the State of California. The SIERRA CLUB's mission is: to explore, enjoy, and protect the wild
14 places of the earth; to practice and promote the responsible use of the earth's ecosystems and
15 resources; to educate and enlist humanity to protect and restore the quality of the natural and
16 human environment; and to use all lawful means to carry out these objectives. The SIERRA
17 CLUB has members and offices throughout the country, including in Portland, Oregon.

18 10. Plaintiff OREGON NORDIC CLUB, Inc., is a non-profit corporation organized
19 under the laws of the State of Oregon. The OREGON NORDIC CLUB is dedicated to promoting
20 greater participation in, and understanding the value of, outdoor recreation, with an emphasis on
21 Nordic and backcountry skiing. The OREGON NORDIC CLUB has its physical address in
22 Beaverton, Oregon.

23 11. Plaintiff FRIENDS OF MOUNT HOOD, Inc. is a non-profit corporation

1 organized under the laws of the State of Oregon. FRIENDS OF MOUNT HOOD is dedicated to
2 monitoring development and management of national forest lands on Mount Hood. It is
3 especially interested in protecting the alpine meadows, wetlands, streams, wildlife, and forested
4 slopes on the mountain. FRIENDS OF MOUNT HOOD has its physical address in Portland,
5 Oregon.

6 12. Plaintiff the OREGON KAYAK AND CANOE CLUB, Inc. is a non-profit
7 corporation organized under the laws of the State of Oregon. One of the organizational missions
8 of the OREGON KAYAK AND CANOE CLUB is to support conservation and protection of
9 river resources and fair public access. The OREGON KAYAK AND CANOE CLUB has its
10 physical address in Portland, Oregon.

11 13. Plaintiff MIKE McCARTHY is an individual and resident of Hood River County
12 who owns property near the Hood River County land that is the subject of this dispute, and who
13 owns and operates fruit orchards near said land. MIKE McCARTHY's professional, recreational,
14 spiritual, and aesthetic interests will be harmed if the Proposed Exchange is completed as set
15 forth in the ROD.

16 14. The Conservation Plaintiffs have members and supporters throughout Oregon,
17 including many who actively participate in governmental decision-making processes involving
18 public lands such as the Mt. Hood National Forest. Further, the Conservation Plaintiffs have
19 members who use the federal lands that are the subject of the challenged land trade. If the land
20 trade is completed and the land that is now public becomes private, those members' interests will
21 be harmed by exclusion from the land. Further, the private development of that land will result in
22 the destruction of the public forest that currently exists there, negatively impacting wildlife that
23 the Conservation Plaintiffs' members would otherwise enjoy observing.

1 15. The Conservation Plaintiffs’ supporters, officers, and staff hike, camp, bird watch,
2 view wildlife, photograph scenery and wildlife, and engage in other vocational, educational,
3 scientific observation, and recreational activities in the Mt. Hood National Forest, including the
4 federal lands subject to the challenged land trade.

5 16. Furthermore, Plaintiffs McCarthy and Thrive Hood River are currently parties to
6 separate pending litigation in Hood River County Circuit Court involving the “private” Hood
7 River County parcels offered by Meadows to the Forest Service in this case. *Hood River Valley*
8 *Residents’ Committee, Inc. vs. Bd. of Cnty. Commissioners of Hood River Cnty*, Hood River
9 County Circuit Court Case No. 020029 CC. That case involves Thrive’s and McCarthy’s
10 challenge to a prior land exchange completed between Meadows and Hood River County, and
11 that exchange involved some of the same Hood River County land that is at issue in this federal
12 case. If that state court litigation is successful, then the previous exchange between Meadows and
13 Hood River County may be unwound and the Hood River County property returned to public
14 ownership. The completion of the Proposed Exchange would seriously complicate, if not entirely
15 prevent, that unwinding. In so doing, it would prejudice Thrive’s and McCarthy’s available legal
16 remedies in the state court case.

17 17. Further, Thrive and McCarthy are also parties to a 2005 Settlement Agreement, to
18 which Meadows and the Board of County Commissioners of Hood River County are also parties.
19 The Forest Service has been aware of that agreement for many years, including well before it
20 issued the challenged ROD in this case. The 2005 Settlement Agreement sets forth rights and
21 obligations relating to, among other things, the Clean Sweep land exchange contemplated by the
22 legislation. Completion of the exchange *as currently proposed by the ROD* will interfere with
23 those contractual relationships, rights, and obligations to Thrive’s and McCarthy’s detriment.

1 Specifically, but without limitation, completion of the Proposed Exchange as approved in the
2 ROD will entirely prevent Thrive and McCarthy from obtaining the benefit of their bargain in
3 entering into the 2005 Settlement Agreement.

4 18. The Conservation Plaintiffs, including their officers, staff, and supporters, reside
5 near and/or regularly visit exchange parcel areas implicated by this dispute. The Conservation
6 Plaintiffs' officers, staff, and supporters derive recreational, inspirational, religious, scientific,
7 and aesthetic benefit from their activities within and around these areas, and intend to continue to
8 use and enjoy these areas frequently and on an ongoing basis in the near and distant future.

9 19. Each Conservation Plaintiff group has an organizational interest in the proper and
10 lawful management of the Mt. Hood National Forest. Conservation Plaintiffs' aesthetic,
11 recreational, scientific, and spiritual interests have been and will be adversely affected and
12 irreparably injured if the Forest Service affirmatively implements the Proposed Exchange as
13 approved in the ROD (rather than as proposed in the 2005 Settlement Agreement, and the
14 legislation mandating a land trade that followed that Agreement). These are actual, concrete
15 injuries caused by the Forest Service's failure to comply with mandatory duties under the
16 National Environmental Policy Act, the Omnibus Act, the Clarification Act, and other federal
17 laws. These injuries would be redressed by the relief sought.

18 20. Conservation Plaintiffs have participated extensively in administrative actions to
19 protect their interests with regard to the parcels proposed for exchange. Plaintiff's actively
20 participated in the administrative process for the current Proposed Exchange and have exhausted
21 any and all available administrative remedies. Reviewable final agency action exists that is
22 subject to this Court's review under section 702 and 704 of the APA.

23 21. Defendant UNITED STATES FOREST SERVICE is an agency of the United

1 States and is a division of the Department of Agriculture, and is charged with managing the
 2 public lands and resources of the Mt. Hood National Forest in accordance and compliance with
 3 federal laws and regulations. The Service is an agency within the meaning of the APA, 5 U.S.C.
 4 § 551.

5 22. Defendant META LOFTSGAARDEN, Forest Supervisor for the Mt. Hood
 6 National Forest, signed the challenged ROD and is the official responsible for deciding whether
 7 the Proposed Exchange is compliant with law. Defendant META LOFTSGAARDEN is sued
 8 only in her official capacity.

9 **STATUTORY AND REGULATORY FRAMEWORK**

10 **National Environmental Policy Act (42 U.S.C. §§ 4321-4370(h))**

11 23. Congress enacted the National Environmental Policy Act (“NEPA”) in 1969,
 12 directing all federal agencies to assess the environmental impacts of proposed actions that
 13 significantly affect the quality of the human environment. According to 42 U.S.C. § 4321, NEPA
 14 seeks to “promote efforts which will prevent or eliminate damage to the environment and
 15 biosphere and stimulate the health and welfare of man.” The regulations implementing NEPA¹
 16 make it clear that NEPA obligates agencies to make available to the public high-quality
 17 information, including accurate expert analyses, expert agency comments, and public comments,
 18 before decisions are made and before actions are taken. NEPA’s public disclosure goals, as
 19

20
 21 ¹ The NEPA regulations are promulgated by the Council on Environmental Quality (CEQ)
 22 and are binding on the Forest Service. In September 2020 the CEQ amended the NEPA
 23 regulations, but the Service conducted its NEPA analysis under the prior version of the NEPA
 regulations because of when the NEPA process for the challenged decision began.

1 articulated in 42 U.S.C. §§ 4321, 4332, are twofold: (1) to ensure that the agency has carefully
 2 and fully contemplated the environmental effects of its action; and (2) to ensure that the public
 3 has sufficient information to review, comment on, and challenge (if necessary) the agency's
 4 action.

5 24. The Court reviews agency actions taken pursuant to NEPA under the APA.

6 25. Under 42 U.S.C. § 4332(C), NEPA requires all federal agencies to prepare a
 7 "detailed statement" assessing the environmental impacts of all "major Federal actions
 8 significantly affecting the quality of the human environment." This statement is known as an
 9 Environmental Impact Statement (EIS).

10 ***EIS Requirements***

11 26. An agency must prepare an EIS if the agency determines that the proposed action
 12 has the potential to significantly affect the environment.

13 27. An EIS must adequately: (1) describe the agency's need for the proposed action;
 14 (2) include an analysis of the environmental impacts of the proposed action and its alternatives;
 15 and (3) consider the direct, indirect, and cumulative impacts resulting from all past, present, and
 16 reasonably foreseeable future actions. In other words, before taking a major action, an agency
 17 must take a hard look at why action is needed, its reasonable alternatives, and the environmental
 18 consequences.

19 ***United States Forest Service Project-Level Pre-decisional 20 Administrative Review Process Regulations (36 C.F.R. Pt. 218)***

21 28. The Forest Service regulations at 36 C.F.R. § 218.1 establish a pre-decisional
 22 administrative review process (also known as the "objection" process) for proposed actions of
 23

1 Forest Service projects documented with a Record of Decision.

2 29. Objections are written documents seeking pre-decisional administrative review of
3 a proposed project documented with an EIS and can be filed by those who have submitted
4 written comments to the specific project during the commenting opportunity.

5
6 **The 2009 Omnibus Act (Public Law 111-11, 123 Stat. 1018) and
the 2018 Clarification Act (Public Law 115-110, 131 Stat. 2270)**

7 30. In 2009 Congress passed the Omnibus Public Land Management Act, (Public
8 Law 111-11, 123 Stat. 1018) (the “Omnibus Act”), directing, among other things, the completion
9 of a land exchange (the Clean Sweep) between Mt. Hood Meadows and the Forest Service. As it
10 relates to that land exchange, the Omnibus Act was supplemented in 2018 by the Mount Hood
11 Cooper Spur Land Exchange Clarification Act (Public Law 115-110, 131 Stat. 2270) (“the
12 Clarification Act”). Collectively and as operating together with regard to the Cooper Spur-
13 Government Camp land exchange, the Omnibus Act and the Clarification Act are referred to
14 herein simply as “the Act.”

15 31. The provisions of the Act are attached hereto as Exhibit A. Because Congress
16 crafted and passed the Act specifically for the Mt. Hood land exchange, its provisions are
17 discussed below in Plaintiffs’ claims for relief.

18
19 **Administrative Procedure Act (5 U.S.C. § 701-706)**

20 32. Section 702 of the APA provides a private cause of action to any person
21 “suffering legal wrong because of agency action, or adversely affected or aggrieved by agency
22 action within the meaning of a relevant statute.”

23 33. Under section 704 of the APA, “final agency action” is reviewable. A final

1 agency action is one that marks the consummation of the agency's decision-making process and
2 one by which rights or obligations have been determined or from which legal consequences flow.

3 34. Under section 706 of the APA, a reviewing court shall hold unlawful and set aside
4 agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion,
5 or otherwise not in accordance with law, or found to be made without observance of procedure
6 required by law.

7 35. NEPA and the Act do not contain specific judicial review provisions, so the
8 Forest Service's decision is subject to judicial review under the APA.

9
10 **CLAIMS FOR RELIEF**

11 **Plaintiffs' First Claim for Relief**
(Violations of NEPA and the APA by the Forest Service)

12 36. Plaintiffs reallege and incorporate by reference all preceding paragraphs into each
13 of the counts set forth below.

14 37. Plaintiffs are, if they prevail in this action, entitled to their reasonable costs,
15 litigation expenses, and attorney fees associated with this litigation, pursuant to the Equal Access
16 to Justice Act found at 28 U.S.C. § 2412.

17 **Count 1**

18 ***(Flawed Purpose and Need Statement)***

19 38. The reasonableness of a purpose and need statement in an EIS is assessed by
20 considering the statutory context of the federal action. In this case, the primary statutory context
21 is the Act, which governs the Proposed Exchange. The purpose and need statement should
22 therefore be entirely guided by the provisions of the Act.
23

1 39. Unfortunately, the EIS defines its objectives in a way that does not accurately
 2 reflect the imperatives of the Act, rendering the purpose and need statement unreasonable and
 3 unlawful. As a result of this unreasonable purpose and need statement the EIS did not consider a
 4 reasonable set of alternatives. Both the unreasonable purpose and need statement and the
 5 resulting unreasonable set of alternatives violate NEPA.

6 40. Under NEPA, the first thing an agency must define is the project's purpose. In
 7 this case, according to the EIS at p.8, "[t]he overall purpose of this project is to comply with the
 8 congressional direction and conditions in the Omnibus Act and Clarification Act." Despite that
 9 acknowledgment, the EIS identifies several "needs" that go beyond the terms of the Act, as
 10 follows:

11 1. "[T]he need to account for the direction in [the Act] that triggers the
 12 congressional designation of approximately 1,710 acres of existing NFS lands to wilderness
 13 upon completion of the exchange," along with the congressional designation of "up to 2,854
 14 acres" as the Crystal Springs Watershed Special Resources Management Unit;

15 2. "The Cooper Spur Mountain Resort, if acquired by the Forest Service, will also
 16 need to be evaluated for disposition and, potentially, the continued use through the issuance of a
 17 special use permit."

18 These supposed "needs" are inconsistent with the Act. Further, one need that is critical to
 19 compliance with the Act, and therefore *should* be included in the EIS's purpose and need
 20 statement, is not identified at all.

21 41. The first "need" identified above grossly misrepresents the provisions of the Act.
 22 While the Act, in section 1205(a)(1)(A), contemplates that *all* of the land "as generally depicted
 23 on the map entitled 'Crystal Springs Watershed Special Resources Management Unit,' dated
 24 June 2006" be designated as such (which includes *all* of the non-Federal parcels), the EIS at page
 25 8 identifies the Crystal Springs unit as only including "a *portion* of the offered non-Federal lands

1 totaling *up to* 2,854 acres.” (Emphasis added). This “need” defines the land exchange in a way
2 that does not ensure the full implementation of the Act (here, section 1205(a)(1)(A)), therefore
3 the “need” is unreasonable under NEPA because it does not properly reflect the statutory context
4 of the project.

5 42. The second “need” identified above is also invalid under NEPA. That is, it defines
6 itself in such a way that it undermines the purpose and provisions of the Act itself (section
7 1205(a)(1)(A)). By conditioning itself on “if” the Cooper Spur Mountain Resort is acquired by
8 the Forest Service, this purported “need” in the EIS did not ensure that the Forest Service
9 actually *would* acquire the Cooper Spur Mountain Resort. But since the Cooper Spur Mountain
10 Resort property is located within the area that section 1205(a)(1)(A) contemplates being
11 designated as part of the Crystal Spring unit, excluding that property is inconsistent with the Act.
12 This “need” is therefore unreasonable under NEPA.

13 43. The EIS’s purpose and need statement also lacks a need that relates to the
14 Clarification Act of 2018. As amended by the Clarification Act, the Act includes a provision
15 (section 1206(a)(2)(E)(i)) that places emphasis on the “need” to equalize appraised values of the
16 exchanged properties. That language reads: “[I]n addition to or in lieu of monetary
17 compensation, a lesser area of Federal land or non-Federal land may be conveyed *if necessary* to
18 equalize appraised values of the exchange properties[.]” (Emphasis added). The EIS fails to
19 recognize this limitation of the Act, and that failure is reflected both in the alternatives
20 considered by the Forest Service and the preferred alternative selected in the ROD. That failure
21 renders the purpose and need statement unreasonable under NEPA because it does not properly
22 reflect the statutory context (i.e. section 1206(a)(2)(E)(i) of the Act).
23

1 **Count 2**

2 ***(The selected alternative does not fulfill the Forest Service's stated purpose and need)***

3 44. According to the EIS at p.8, "[t]he overall purpose of this project is to comply
4 with the congressional direction and conditions in the Omnibus Act and Clarification Act." The
5 Forest Service's selected alternative, however, does not meet that purpose and need because the
6 congressional direction in the Omnibus Act and the Clarification Act is to exchange *as much of*
7 *the Federal and non-Federal land as possible* while equalizing values. Because the selected
8 alternative does *not* maximize the land exchanged, the selected alternative does not fulfill the
9 Forest Service's stated purpose and need, in violation of NEPA and the APA.

10 **Count 3**

11 ***(Failure to consider an adequate range of alternatives)***

12 45. The NEPA alternatives analysis, in which an agency evaluates all reasonable
13 alternatives and explains why alternatives eliminated from detailed study were not considered, is
14 the heart of an EIS. In this way, environmental impact statements are meant to meaningfully
15 consider alternative actions rather than justify decisions already made.

16 46. The EIS violates NEPA because it does not analyze all reasonable alternatives and
17 serves only to justify a decision already made. For example, the Forest Service did not consider
18 the following alternatives for equalizing the values of the lands subject to the exchange:

19 1. Mt. Hood Meadows continues to operate the Cooper Spur Ski Area in a newly-
20 configured permit size of approximately 50 acres on the same (or new) terms;

21 2. Mt. Hood Meadows continues to own the Inn at Cooper Spur property (Tract 5)
22 totaling 2.84 acres, with some provision for water from existing sources;

23 3. A donation by Mt. Hood Meadows; and

4. The retention of a possible piece of land adjacent to the Inn at Cooper Spur which

1 consists of forestland surrounding the 2.84-acre parcel (portion of Tract 7) and/or timber harvest
2 on a portion of forestland of Tracts 1, 2, 3 and/or 8 on areas outside of steep slopes, riparian
areas, the drinking watershed zone of contribution.

3 47. The problem with the EIS's alternatives analysis extends further. The EIS
4 completely fails to disclose and analyze the various ways in which the appraised values of the
5 exchange properties could be equalized. That is a major failure in light of section
6 1206(a)(2)(H)(i) of the Act, which allows for a lesser area of land to be exchanged "if necessary"
7 to equalize the appraised values, in addition to or in lieu of monetary compensation. Despite that
8 requirement, neither the EIS nor the ROD confront, let alone explain in any meaningful way,
9 how the selected alternative (or any other alternative) is "necessary" to equalize appraised values
10 of the exchange properties.

11 48. An adequate alternatives analysis, developed with the benefit of the completed
12 and updated appraisals, must consider a reasonable range of different methods to equalize values.
13 Instead, the EIS *does not even discuss the results of the appraisals at all*. As a result, nowhere in
14 the EIS or supporting documents are the appraised values of the exchange parcels discussed or
15 analyzed in any way. To the contrary, without giving any parcel valuation information the EIS
16 baldly states at page 18 that: "The final mix of the Federal parcels and non-Federal parcels to be
17 exchanged (including personal property and improvements to be exchanged, and respective
18 appraised values) will be determined in the final Record of Decision."

19 49. The ROD itself does contain appraisal *valuation* information, but like the EIS it
20 does not contain, let alone analyze, proposed alternatives involving the exchange of additional or
21 different combinations of parcels that would be consistent with the Act. Instead, the ROD simply
22 states that the East Parcel of Federal land, along with Tracts 4, 5, 6, and 7 of the non-Federal
23 land, will not be conveyed. There are no findings of "necessity" under section 1206(a)(2)(H)(i)

1 of the Act, even though such a finding is required if a lesser area of land is to be exchanged. And
 2 even if there was such a finding of “necessity” in the ROD, it would be meaningless under
 3 NEPA without a consideration in the EIS of alternatives involving an exchange of different
 4 parcels, lot line adjustments, lot partitions, different monetary compensation, donation by
 5 Meadows, or a combination thereof. For that reason, the alternatives analysis fails to consider a
 6 reasonable range of alternatives, is fundamentally flawed, and the EIS violates NEPA.

7 50. Further, the Forest Service used the EIS merely to justify a decision that it had
 8 apparently already made, in violation of NEPA. The Act, in section 1206(a)(2)(G)(i), states that
 9 “the Secretary and Mt. Hood Meadows may mutually agree for the Secretary to reserve a
 10 conservation easement to protect the identified wetland in accordance with applicable law.”
 11 However, in the EIS at page iv the Forest Service admits that, prior to completing its NEPA
 12 requirements, the agency decided “not to have the wetland conservation easement reserved.”
 13 Instead of making a pre-NEPA decision regarding the conservation easement, the Forest Service
 14 should have considered the easement, or lack of it, as part of the alternatives analysis.

15 **Count 4**

16 ***(Failure to publish a complete appendix)***

17 51. NEPA’s regulations, at 40 C.F.R. § 1502.19, require that if an agency prepares an
 18 appendix, the agency “shall publish it with the environmental impact statement, and it shall
 19 consist of:”

- 20 (a) Material prepared in connection with the EIS;
- 21 (b) Material substantiating any analysis fundamental to the impact statement;
- 22 (c) Material relevant to the decision to be made; and
- 23 (d) For final EISs, the public comment summaries and responses.

Here, the Forest Service did prepare an appendix (EIS at pp.395-455) but it does not include the appraisals prepared for the exchange parcels. Certainly the appraisals are “material relevant to the decision” since they control the values of the exchange parcels for purpose of this project. Accordingly, they should have been included in the appendix. The Forest Service’s failure to include them was a violation of NEPA that impaired the public’s ability to comment on the appraisals as key components of the EIS.

**Plaintiffs’ Second Claim for Relief
(Violations of the Omnibus Act/Clarification Act and the APA by the Forest Service)**

52. Plaintiffs reallege and incorporate by reference paragraphs 1–35 into each of the counts set forth below.

Count 1

(Improper reduction of the number of Federal and non-Federal acres subject to land exchange)

53. The EIS (at page iii) and ROD (at page 2) describe the land trade as involving “*up to 107 acres*” of public land for “*up to 764 acres*” of private land, suggesting the Forest Service has broad discretion in deciding how much land to trade. (Emphasis added). That is not, however, what the law provides. Section 1206(a)(2)(H)(i) of the Act allows a “lessor area of Federal land *or* non-Federal land” to be conveyed in the exchange “*if necessary to equalize appraised values of the exchange properties*, without limitation” (Emphasis added). The selected alternative is inconsistent with that language because it purports to reduce the amount of both Federal *and* non-Federal land exchanged, instead of just one or the other.

54. Further, the EIS and ROD contain no findings regarding the necessity of those land area reductions to equalize values, and there is no actual need to reduce the exchange

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for an order and judgment:

a. Declaring that the Forest Service's ROD and underlying EIS for the Government Camp—Cooper Spur Land Exchange violate NEPA, the Act, and the APA;

b. Vacating and setting aside the Forest Service's ROD as an illegal agency action under the APA and remanding to the agency;

c. Preliminarily and permanently enjoining the Forest Service from implementing the Proposed Exchange as set forth in the current ROD, unless and until the agency complies with NEPA and the Act;

d. Entering appropriate injunctive relief to ensure that the Forest Service complies with NEPA and the Act, and specifically to ensure that the Forest Service and its agents take no further actions toward proceeding with the challenged Proposed Exchange unless and until they have complied with NEPA and the Act;

e. Awarding Plaintiffs their reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

f. Granting such further relief as the Court deems just and equitable.

Respectfully submitted this 24th day of December 2022.

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/s/ Karl G. Anuta
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